

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

BRIAN KEITH SCHWAB,

Plaintiff,

v.

CORIZON HEALTH, et al.,

Defendants.

Case No. 1:20-cv-484

HON. JANET T. NEFF

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**OPINION AND ORDER**

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Defendants filed two motions for summary judgment (ECF Nos. 56 and 60). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending that the Court grant Defendants' motions and terminate this case (ECF No. 75). The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation (ECF No. 76). In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

Plaintiff does not specifically object to the Magistrate Judge's analysis or findings. Instead, Plaintiff argues that he cannot provide evidence to support his claims because Defendants are denying him discovery, such as his medical record. The Court finds that Plaintiff's argument is without merit. Plaintiff conclusory alleges that missing discovery would support his claims but does not offer any further explanation. Although Plaintiff may not have received his medical

record during discovery,<sup>1</sup> Defendants submitted Plaintiff's medical record as exhibits to their summary judgment motions (ECF Nos. 57, 58, 59, 61-3, and 62). Plaintiff cited the medical record in his summary judgment response (ECF No. 66-1). The Magistrate Judge adequately summarized the medical record and determined that Plaintiff's claims fail. There is no dispute that Plaintiff had dozens of interactions with Defendants regarding his medical conditions and that Plaintiff refused medication and diagnostic testing at times (ECF No. 75 at PageID.896-902). Similarly, there is no evidence that Corizon had a custom, policy, or practice that resulted in the deprivation of Plaintiff's constitutional rights (*id.* at PageID.906-907). Plaintiff's argument fails to demonstrate any factual or legal error in the Magistrate Judge's analysis or conclusion. The Court agrees with the Magistrate Judge's recommendation.

Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. A Judgment will be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58. Because this action was filed *in forma pauperis*, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007).

Therefore:

**IT IS HEREBY ORDERED** that the Objections (ECF No. 76) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 75) is APPROVED and ADOPTED as the Opinion of the Court.

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<sup>1</sup> The Court notes that the Magistrate Judge ruled on Plaintiff's motions to compel discovery on May 4, 2021 (ECF No. 49), and Plaintiff did not appeal the Magistrate Judge's ruling.

**IT IS FURTHER ORDERED** that the Motions for Summary Judgment (ECF Nos. 56 and 60) are GRANTED.

**IT IS FURTHER ORDERED** that Plaintiff's state law claims are DISMISSED WITHOUT PREJUDICE.

**IT IS FURTHER ORDERED** that this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith.

Dated: September 27, 2022

/s/ Janet T. NEff  
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JANET T. NEFF  
United States District Judge